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SUBJECT: SEED PIRACY IN THAILAND: A "GROWING" PROBLEM

¶1. Summary: Behind the headlines of record losses to optical disc and trademark piracy in Thailand lies a less known but equally serious form of intellectual property infringement. Plant breeders in Thailand have seen their plant varieties and the seeds derived from them, which typically take years and large capital investments to breed, copied and sold by small-time seed dealers. Thailand passed a Plant Variety Protection Act in 1999 to protect these investments, but delays in implementing regulations and registration procedures has meant that enforcement is non-existent. Seed firms look forward to enforcement of rights to their new plant varieties, but in the meantime are using their own security tactics to protect their valuable products. End Summary.

Seed sales flowering, but piracy growing like a weed

¶2. Thailand is a net exporter of seed for both field crops (corn, rice, soybeans, etc.) and vegetables, and a growing site of seed production and research and development for breeding new plant varieties. The Thai seed market is estimated at over USD 200 million in annual sales, mostly in field crops. Thailand imported about USD 11 million in seed in 2005, but exported approximately USD 35 million worth and projections are for that number to triple in the next five years. The U.S. and Japan are the top export destinations. Multinationals control about 80 percent of the field crop seed market, but Thai firms are dominant in vegetable seed sales.

¶3. Like most intellectual property, new plant varieties are costly and time consuming to develop, but cheap and easy to copy. Seed firms in Thailand develop their products the old-fashioned way, selecting plants with desirable properties such as high yield and resistance to disease and insects, then cross breeding them to develop improved varieties. After development and testing in field trials, the firms contract with local farmers to grow the new and improved variety to produce seed for sale to farms around the country and for export. As Thailand's seed market began growing in the 1990s, seed piracy grew right along with it. Seed pirates, usually small-time sellers in rural areas but also increasingly more sophisticated operations, purloin firms' new plant varieties by either surreptitiously stealing the parent lines of the new hybrid from test fields or paying off contract farmers for a sample. The pirates then reproduce the new breed on their own farms and sell the resulting seed.

(Note: Genetically modified crops are not authorized in Thailand, but there is anecdotal evidence that some farmers are growing bootlegged GM cotton and papaya without authorization.)

¶4. Mr. Manas Chiravavonda, director of Chia Tai, the

largest vegetable seed seller in Thailand, couldn't put a figure on the percentage of seed piracy, but labeled it "huge", a problem affecting both Chia Tai's domestic sales and exports. Monsanto reps estimated the piracy rate at single digits, but saw it as a growing problem. Field theft accounts for much of the piracy, but Manas said firms' own employees were perhaps the greatest danger. Manas described how one of Chia Tai's employees recently quit the company, walked out the door with the company's latest line of melon seeds and immediately set up his own business selling the seeds to the Indonesia market. Without a means to protect their variety, Chia Tai was helpless to prevent the theft. "It's the wild West out here," says Manas.

15. To combat seed theft firms have developed a raft of security procedures, from stationing security guards around contract farms and research fields to growing and storage protocols to prevent pirates from getting the latest variety. Chia Tai treats plant development as a trade secret, keeping research under tight wraps and in house to prevent disclosure. The firm develops new varieties more quickly than before and releasing them earlier, trying to stay one step ahead of the pirates. Simon Jan de Hoop, Director of R&D for East-West Seed, said their farms grow the male and female parents of a new hybrid in different fields, making it more difficult for pirates to get both keys to the new plant. When possible multinationals like Monsanto keep the parent lines back in the home country.

16. To further avoid piracy, seed firms are moving production bases offshore to China, India, and Thailand's ASEAN neighbors, particularly countries where the seed variety to be sold in Thailand is not being sold locally. Although piracy occurs in these countries as well, pirates

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are less familiar with the plant material and the risk is consequently lower. However, seed firms worry that the pirates are developing their own international connections, working with partners in other countries to pilfer the best new varieties.

PVP Act yet to reap benefits

17. Thailand passed the Plant Variety Protection (PVP) Act in 1999 to extend intellectual property rights to new crop varieties, but many implementing regulations have yet to be promulgated and registration of new varieties is only now set to begin. East West's Simon de Hoop blamed some of the delays on staff turnover in the Ministry of Agriculture, but considered the staff capable and knowledgeable about the issues. Nevertheless, until varieties are officially registered there exist no legal restrictions to prevent a seed pirate from freely selling another seed firm's variety. "It's free to steal," says Chia Tai's Manas.

18. The Ministry of Agriculture's (MoA) Plant Variety Protection Office has responsibility for examining and approving new plant varieties. Under the PVP Act only certain crops can be protected; at the moment MoA accepts applications for 33 crop varieties though plans are in the works to add more crops to the protected list. Breeders can request additional crop varieties to be added, and though the variety must meet a set of criteria, MoA says that in practice breeders are unlikely to be turned down. MoA has accepted 99 applications for new plant variety protection in the two years since they began accepting applications, but only recently got closer to issuing approvals for the first batch: 14 new varieties of orchids. If a new variety is commercialized, MoA requires that one percent of revenues be paid into a plant variety protection fund to go towards conservation and community development projects. The fund contribution is considered compensation for use of Thai genetic resources in developing the product. Firms that do not use Thai plant resources are exempt from the fund payment.

¶9. The PVP Act provides protection for new plant varieties for between 12 to 27 years depending on the plant. The Act lays out penalties for unauthorized sales of a protected variety, up to two years imprisonment and/or a USD 10,000 fine, though there has yet to be a case filed. Mr. Sakorn Tripetchposal of Pioneer Hi-bred said that a DNA fingerprinting laboratory at Kasetsart (Agriculture) University was available to seed firms and could offer proof within days that a protected variety had been counterfeited. Sakorn looks forward to enforcement authorities bringing seed pirates to court, but it is uncertain whether authorities will take this form of piracy any more seriously than they have other IP piracy in Thailand. Without active involvement from police, firms would be forced to resort to bringing lawsuits against infringers and hoping for damages. East West Seeds, which is expecting a new sweet corn variety to be approved soon, said they were prepared to enforce their rights, but were concerned that in the end a legal suit may not be worth the cost to bring an infringer to justice.

¶10. In recent negotiations for a U.S.-Thai Free Trade Agreement, Thai negotiators resisted a U.S. proposal for Thailand to join the International Union for the Protection of New Varieties of Plants (UPOV in the French acronym). Thailand's PVP Act is based in large part on an earlier version of the convention, UPOV 1978, but the 1991 updated version tightens protections for plant breeders that Thai IP experts consider not in Thailand's best interests. Dr. Tanit Changthavorn of Biotec, part of the Ministry of Science and Technology, explained that the RTG had concerns over UPOV's restrictions on farmers saving seed for the next harvest, resource issues on protecting all crop varieties rather than only select crops, and the lack of a requirement for benefit sharing for the use of local plant resources in breeding new varieties. Some seed firms said that although they would support Thailand joining the UPOV convention, they considered the PVP Act to contain sufficient protection for their new varieties and were substantially more concerned with proceeding with enforcement of the current law.

¶11. Comment: Not as visible as the rampant trade in counterfeit CDs, DVDs and Billabong shorts on the streets of Bangkok, seed piracy is nevertheless having an economic impact on Thailand, specifically on farmers, a population perhaps least able to afford an economic blow. Firms have been unwilling to conduct in-depth research into new vegetable varieties that have relatively low sales, and

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improvements in yield have lagged compared with the more lucrative field crops. Counterfeits of new plant varieties are typically not properly controlled in production and farmers do not have access to detailed information on fertilizer and herbicide spraying techniques and timing for the new varieties, resulting in higher costs and lower production yields. Hopes are high among plant breeders that enforcement of the PVP Act can turn this situation around, but it is an open question whether the police or courts will take the crime seriously enough to put a dent in piracy. End comment.
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